

FISCAL NOTE

SB 20

January 31, 2001

SUMMARY OF BILL: Makes managed care organizations liable for damages for harm to an insured enrollee when the managed care entity fails to exercise ordinary and reasonable care in making healthcare decisions. The bill would not impose liability on employers, employer groups or employee associations purchasing healthcare insurance, including self-funded plans if administered by an independent contractor, pharmacies or the state of Tennessee. The bill would not apply to workers compensation insurance. The bill does not require insurance companies to provide benefits that are not included in their plans. Before filing a lawsuit a plaintiff must exhaust internal and external appeal procedures or agree to submit the claim for mediation or other nonbinding alternative dispute resolution. If the managed care entity accepts mediation the claim must be submitted for such process. An enrollee may file suit without submitting to such a process in circumstances where harm has already occurred or if such process would not be beneficial to the enrollee.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures - Exceeds \$1,000,000

Increase Local Govt. Expenditures*- Exceeds \$100,000

Other Fiscal Impact:

Increase Federal Expenditures - Exceeds \$2,000,000

Estimate assumes that:

- The amount of increased cost to the state in the TennCare program and the state employees health insurance program cannot be determined but can be reasonably estimated to at least exceed \$1,000,000. Cost estimates of similar legislation vary greatly. For information purposes the Congressional Budget Office estimated in a review of the Managed Care Improvement Act of 2000 that the right to sue (ERISA preemption) would increase premiums by about 1.0 percent. A study by Muse and Associates estimated the increase at about 0.2 percent. A study of proposed California legislation by Price Waterhouse for the Kaiser Foundation estimated that such legislation could lead to premium increases of 0.1 to 0.4 percent. The Barents Group of KPG Peat Marwick in a report for the American Association of Health Plans estimated increased managed care plans' cost of 2.7% to 8.6%. As an example, an increase of 0.1 percent to 1 percent in TennCare cost would result in an increase of approximately \$2.7 million to \$27 million in state and federal spending for MCO and BHO services.

- Managed care organizations contracting with the state will incur increased cost from exposure to additional liability. It is reasonable to assume that such cost would ultimately be passed on to the state by TennCare managed care organizations and to the state and local government employee health insurance plans by contract administrators of those plans.
- Although the state is excluded from liability as an employer it appears that health care contractors administering the state employees health plan would not be excluded from liability.

Factors that may impact cost include:

- Differences in the appeal process between this bill and the Grier consent decree may result in additional administrative cost to TennCare managed care organizations.
- Tennessee does not have limitations on tort awards and the bill does not include limitations.
- Requiring internal and external appeal procedures to be used prior to court action in most cases should reduce the number of potential lawsuits. However, the number of appeals may increase, which could result in an increase in administrative costs to managed care organizations administering governmental health care plans. In addition there is the potential for increased medical cost to the extent that additional health care services are provided as a direct result of the appeals process.
- Higher exposure to liability may result in reduced availability of health insurance for people with catastrophic medical conditions potentially increasing the uninsurable population in the TennCare program.

**Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.



James A. Davenport, Executive Director